

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>DIANNA JOLENE BLAKE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>8:06CV355</b>
	)	
<b>CARVER TRUCK LINES, INC., A</b>	)	<b>ORDER</b>
<b>Kentucky Corporation, STEVEN</b>	)	
<b>CARVER, and MARKINA L. CONSTANT,</b>	)	
	)	
<b>Defendants.</b>	)	

This matter is before the court on the motion of defendants Carver Truck Lines, Inc. and Steven Carver<sup>1</sup> to transfer venue to North Platte, Nebraska [7].

This issue is now governed by NECivR 40.1, which provides:

- (b) Requests for Place of Trial.** The plaintiff at the time of filing a complaint in a civil action or the removing party at the time of filing a petition for removal shall make written request for trial of the case at Omaha, Lincoln, or North Platte. Each defendant or third-party defendant at the time of filing that defendant's first pleading in a civil action, or the plaintiff in a removed action within ten (10) days after service of the notice of removal, may file a written request for trial at Omaha, Lincoln, or North Platte. If the request is for a place different from that requested by the plaintiff, third-party plaintiff, or removing party, it must be accompanied by a supporting affidavit.
- (1) Form of Request.** The request for place of trial may be a separate pleading or may be endorsed upon the complaint or other initial pleading, and shall be served upon each party.
- (2) Conflicting Requests.** The judge may resolve conflicting requests without oral argument. Except for cases governed by the special rules for the Nebraska docket and for the death penalty, *see* NEGenR 1.4(a)(5) and (6), the judge shall consider the convenience of the litigants, witnesses, and counsel when deciding the place of trial.

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<sup>1</sup>The remaining defendant, Markina L. Constant, has not yet been served.

- (3) **Amended Request.** A party may amend an initial or opposing request for place of trial at any time during the pendency of the action if material circumstances bearing on the proper place of trial change.

Plaintiff opposes a change of venue, and the court has considered all the materials submitted by the parties (Filings 7, 8, 12 & 15).

In general, the party seeking transfer bears the burden of establishing that the transfer should be granted. *Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 119 F.3d 688, 695 (8th Cir.), *cert. denied*, 522 U.S. 1029 (1997); *Nelson v. Bekins Van Lines Co.*, 747 F. Supp. 532, 535 (D. Minn. 1990). The movant must make a clear showing that the balance of interest weighs in favor of the movant. *See General Comm. of Adjustment v. Burlington N. R.R.*, 895 F. Supp. 249, 252 (E.D. Mo. 1995); *BASF Corp. v. Symington*, 50 F.3d 555, 557 (8th Cir. 1995). A transfer should not be granted if the effect is to merely shift the inconvenience from one party to the other. *Nelson*, 747 F. Supp. at 535 (citing *Van Dusen v. Barrack*, 376 U.S. 612, 646 (1964)); *General Comm. of Adjustment*, 895 F. Supp. at 252; *see generally Ferens v. John Deere Co.*, 494 U.S. 516, 522-23 (1990). In order to prevail, the movant must show that its inconvenience strongly outweighs the inconvenience the opposing party would suffer if venue were transferred. *See Nelson*, 747 F. Supp. at 535.

In this case, the parties have submitted evidence demonstrating the relative conveniences of their choices of venue. Both positions have merit; however, I do not believe the defendants have shown that their inconvenience strongly outweighs the inconvenience the plaintiff would suffer if trial were held in North Platte instead of Omaha.

**IT THEREFORE IS ORDERED** that defendants' request for trial in North Platte is denied, without prejudice to defendants filing an amended request pursuant to NECivR 40.1(b)(3) if there is a material change of circumstances bearing on the proper place of trial.

**DATED June 20, 2006.**

**BY THE COURT:**

s/ F.A. Gossett  
United States Magistrate Judge